IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 248 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARSHESHBHAI KANUBHAI SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 248 of 2003

MR BN PATEL for Petitioner No. 1

MR IM PANDYA, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 04/05/2004

ORAL JUDGEMENT

1. Rule. Service of Rule is waived by ld. APP Mr. Pandya for the respondent State. With the consent of ld. counsel appearing for the parties, matter is taken up for

final hearing today.

2. The petitioner is original accused No.6 of Criminal Case No. 1/2001 pending in the Court of ld. Chief Metropolitan Magistrate, Ahmedabad and he is asked to face charge of the offences punishable under Sections 465, 467, 468, 471, 420 and 420-B of Indian Penal Code. The petitioner moved an application Exh.7 under Sections 227 & 228 of CrPC before ld. Chief Metropolitan Magistrate praying discharge stating that he is not guilty of any of the offences for which he has been chargesheeted by the Investigating Officer. The say of the petitioner is that he has been wrongly implicated in the offence otherwise he is a young Chartered Accountant and on the contrary, the Investigating Agency probably could have named him as one of the witnesses in favour of the prosecution instead of prosecuting him. However, ld. Chief Metropolitan Magistrate, vide order dated 25.10.2002, rejected the said application exh.7. The petitioner was contemplating to challenge the order of rejection of the application before appropriate forum, but because of reasons beyond control, he could not do it, is the say of the petitioner before this Court. It is submitted by ld. counsel Mr. Patel for the petitioner that petitioner had approached the Sessions Court by moving Revision Application under Sec.397 of CrPC challenging the impugned order dated 25.10.2002 passed by ld. Chief Metropolitan Magistrate. However, as that Cri. Rev. Application was filed after period of limitation i.e. after expiry of 90 days, the application for condonation of delay was also simultaneously preferred. The application for condonation of delay preferred by the petitioner was registered in the Court of ld. City & Sessions Court, Ahmedabad as Cri. Misc. Application No.484/2003. When the aforesaid application was listed for hearing before the ld. Addl. Sessions Judge, Court No.9, Ahmedabad, after hearing submissions advanced on behalf of the parties, ld. Addl. Sessions Judge, vide order dated 10.3.2003, dismissed said application by rejecting the prayer for condonation of delay, for the reasons assigned in the order under challenge.

3. According to ld. counsel Mr. Patel for the petitioner, the order passed by ld. Addl. Sessions Judge is erroneous and contrary to the accepted proposition of law. The approach of the Court should be pragmatic and liberal when the Court is put to notice of sufficient cause within the meaning of Sec.5 of the Limitation Act and it is not obligatory on the part of the applicant to explain the delay of each day.

4. Having considered the order under challenge, it appears that the State had resisted the request to condone delay caused in preferring Rev. Application. I would like to reproduce the relevant part of the order because it covers the submissions made by ld. APP appearing on behalf of State of Gujarat and reasons for rejecting the same assigned by the ld. Addl. Sessions Judge, as under:-

> "..... The State has objected to this firstly on the ground that, the original complainant GSFC has not been impleaded as party and, therefore, not served with notice and moreover, there is no justifiable reason for allowing the said application. This Court is of the opinion that, each day's delay is to be explained reasonably and sufficiently. What is being found is that, there is no reason worth the name justifying non-filing of the revision application earlier.There is nothing to suggest as to why from 25.10.2002 to 28.11.2002 the certified copy was not obtained. Presuming for a moment that, it was the Court's function to give the certified copy of the order earlier then also, till dt; 24.12.2002 when the brother is alleged to have met with an accident, there is nothing to show as to why the interim period had not been utilised by the applicant for preferring the revision application. Subsequent thereto as well the mother has fallen sick on dt; 17.02.2003 and there was sufficient time left with the applicant for moving an appropriate forum for the same."

5. This Court is not in agreement with the reasons assigned by the ld. Addl. Sessions Judge. It would be incorrect to say that the petitioner could have preferred Revision Application in time prior to the day on which his brother met with an accident on 24.12.2002 or during the illness or sickness of his mother. It may be that the petitioner might have failed to produce documents in support of his contention as to the sickness of his mother or regarding accident occurred on 24.12.2002. Litigant is at liberty to wait till last date of expiry of the period of limitation and if he is victimised by the circumstances which can be said to be beyond his control, then while appreciating the plea in the Court pleaded by such petitioner, the approach of the Court should be liberal and pragmatic with the established law propounded by the Apex Court. I would like to quote observations made by the Apex Court in the case of State

of Haryana v/s Chandra Mani & Ors., reported in AIR 1996 SC 1623, as under:-

" In O.P.Kathpalia v. Lakhmir Singh (dead), (1948) 4 SCC 66 : (AIR 1984 SC 1744), a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In Collector, Land Acquisition, Anantnag v. Mst. Katiji (1987) 2 SCC 107 : (AIR 1987 SC 1353), a Bench of two Judges considered the question of the limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the Court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice- that being the life-purpose for existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational commons sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side can not claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before the law demands

that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. there is no warrant for according a step-motherly treatment when the State is the applicant. The delay was accordingly condoned."

6. This Court, to satisfy itself, has called upon the ld. counsel Mr. Patel appearing for the petitioner to bring documents in support of his say regarding illness of his mother and his brother having met with an accident for which he was hospitalised. Today, ld. counsel Mr. Patel has brought those documents as to the nature of injuries sustained by his brother in the accident and documents regarding sickness of his mother. His brother was admitted in Sterling Hospital as an indoor patient because of head injury sustained. Of course, this Court is not supposed to consider any documents while dealing with Revision Application and the petitioner could have been directed to place those documents afresh by remanding the matter. This exercise could have been done by the lower Court. However, to avoid multiplicity of the proceedings and when this Court is satisfied that the order of ld. Addl. Sessions Judge is erroneous, then appropriate orders can be passed by this Court while exercising revisional jurisdiction vested in it under Sec.397 R/w Sec.401 of CrPC. While leading condoning delay, the Court also should consider the period of delay. In the present case, delay is of 35 days and it is apparent that this is not a case of gross delay or of afterthought and, therefore, ld. Addl. Sessions Judge ought to have exercised its discretionary jurisdiction in a legal and proper manner. So, it is rightly submitted that this is case of failure to exercise jurisdiction by the competent court.

7. For the reasons aforesaid, Revision Application is allowed. The impugned order dated 10.3.2003 passed by ld. Addl. Sessions Judge, Court No.9, Ahmedabad dismissing Cri. Misc. Application No.484/2003 praying for condonation of delay is hereby quashed and set aside. The delay of 35 days caused in preferring Cri. Rev. Application before the ld. Addl. Sessions Judge against the order passed by ld. Chief Metropolitan Magistrate dated 25.10.2002 rejecting application exh.7 praying discharge in Criminal Case No. 1/2001 is hereby condoned. Ld. Addl. Sessions Judge is directed to hear and dispose of the Cri. Rev. Application preferred by the petitioner against the impugned order passed by ld. Chief Metropolitan Magistrate as stated above, on merits and in accordance with law.

8. Rule is made absolute.

[C.K. BUCH, J]

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